

PJS:MAS:jmh

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JEFFREY S. CLARK,	:	NO. 3:CV-10-00026
Plaintiff	:	
	:	(Caputo, J.)
v.	:	
	:	
LT. J. FLEMING, et al.	:	
Defendants	:	Filed Electronically

**DEFENDANTS FLEMING AND KULAGO's
ANSWER AND AFFIRMATIVE DEFENSES**

COME NOW, Defendants Felming and Kulago, in accordance with Rule 8(b) of the Federal Rules of Civil Procedure, and answer Plaintiff's Complaint filed on January 6, 2010, as follows¹:

I. Previous Lawsuits

A. No response is required to this section.

II. Exhaustion of Administrative Remedies

A. Admitted.

¹ Clark's Complaint is not compliant with Fed. R. Civ. P. Rule 10, which requires the statement of his claim to be in separate numbered paragraphs. Nevertheless, Defendants Fleming and Kulago will answer to the best of their ability.

B. Admitted in part and denied in part. It is admitted that Clark filed administrative remedies with regard to his Eighth Amendment Claim. The remainder of this paragraph is denied.

C. Admitted in part and denied in part. Defendants concede that Clark has exhausted his Eighth Amendment claims against Defendants Fleming and Kulago. The remainder of this paragraph is denied.

III. Defendants

A. Admitted.

B. Admitted as to Defendant Kulago. The remainder of this paragraph and page 2 in the ECF filing of the Complaint do not require a response as there are no other defendants remaining in the lawsuit.

IV. Statement of Claim

1. Denied. To the extent Clark references “8th Amendment violations” and “violations of the U.S. Constitution” these references call for legal conclusions to which no answer is required. To the extent the remainder of the paragraph refers to Defendants Fleming or Kulago, and the remaining claim, it is denied.
2. No answer is required with regard to Plaintiff’s list of legal authority.

Page 2(a) Lines 1-17: No response is necessary to this section of Clark's Complaint because it refers to defendants who have previously been dismissed from this action.

Page 2(a) Lines 18-30: Admitted in part and denied in part. While Defendants Fleming and Kulago admit they escorted Clark from the third floor of G-Block housing downstairs to a holding cell, the rest of the averments are denied.

Page 2(b) Lines 1-44: Denied as to the allegations that pertain to Defendants Fleming and Kulago. To the extent this section contains a legal conclusion, no response is necessary.

V. Relief

1. No response is required as to this averment.
2. No response is required as to this averment.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Sovereign immunity bars the Court's subject matter jurisdiction over any alleged constitutional claims for money damages against Defendants in their official capacity.

Second Affirmative Defense

Defendants are entitled to qualified immunity.

Third Affirmative Defense

Lieutenant Fleming should be dismissed since respondent superior cannot form the basis of Bivens liability.

Respectfully submitted,
PETER J. SMITH
United States Attorney

s/ Melissa A. Swauger
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Dated: March 31, 2011

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**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JEFFREY S. CLARK,	:	NO. 3:CV-10-0026
Plaintiff	:	
	:	(Caputo, J.)
v.	:	
	:	
LT. J. FLEMING, et al.	:	
Defendants	:	Filed Electronically

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers.

That on March 31, 2011, she served a copy of the attached

**DEFENDANTS FLEMING AND KULAGO's
ANSWER AND AFFIRMATIVE DEFENSES**

by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania.

Addressee:

Jeffrey Clark
19776-045
USP Lewisburg
P.O. Box 1000
Lewisburg, PA 17837

/s/ Joanne M. Hoffman
JOANNE M. HOFFMAN
Paralegal Specialist